Appendix A

Opinion of The Supreme Court of Virginia

In The Supreme Court of Virginia

Present: All the Justices

CITY OF MANASSAS, ET AL.

OPINION BY CHIEF JUSTICE HARRY L. CARRICO

V. Record No. 800642

September 9, 1982

DORIS B. ROSSON, ET AL.

FROM THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY
Percy Thornton, Jr., Judge

The zoning ordinance of the City of Manassas permits a limited home occupation in a residential district; however, § 1-34(a) of the ordinance restricts the right to "the immediate family residing in the dwelling." The validity of §1-34(a) was challenged by Doris B. Rosson who, on December 7, 1978, was summoned to appear in general district court to answer a charge that she operated a business in a residential district in violation of the Manassas ordinance. Upon her conviction in general district court, she appealed to circuit

court.

While the appeal was pending, the zoning administrator of the City of Manassas filed in circuit court a petition for injunction seeking to restrain Mrs. Rosson from continuing to conduct a business in a residential district. The court considered the appeal and the petition together and, after a hearing, declared §1-34(a) of the Manassas ordinance unconstitutional. By order entered February 1, 1980, the court dismissed the criminal charge against Mrs. Rosson and denied the City's petition for injunction.[1] This appeal concerns

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[1]The February 1, 1980 order adjudicated the principles of the cause and stated it was "final." On February 21, 1980, another order was entered. According to Mrs. Rosson, the second order "took away the aspect of finality of the Judgement of February 1, 1980, and therefore raises the question as to whether this Appeal is from a final judgment." As we interpret the second order, however, it merely suspended the execution

only the denial of the injunction petition and presents the question whether § 1-34(a) is invalid in prohibiting "outside" employees in home occupations.

The record shows that Mrs. Rosson, a widow without immediate family, conducts a telephone answering service in her home on Sudley Road in Manassas. She employs two part-time workers to assist her; neither is related to her, and both reside elsewhere.

Mrs. Rosson's property is located in a single-family residential district that extends along both sides of Sudley Road, a four-lane, heavily traveled thoroughfare in Manassas. Within a short distance of Mrs. Rosson's home, a chiropractor, an orthopedic surgeon, and a general surgeon conduct their practices

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Fn. 1 cont'd: of the first order in accordance with the provisions of Code § 8.01-676.

in dwellings located on Sudley Road, Across the road from Mrs. Rosson's home, Wright Realty, Inc., operates a real estate business in a former dwelling. Two of the medical offices puport to qualify as valid limited home occupations. The other medical office and the real estate business claim valid status as non-conforming uses. Only the real estate business was shown to have "outside" employees.

On appeal, the City contends the trial court erred in holding § 1-34(a) invalid. Mrs. Rosson contends the court was correct because this section of the ordinance (1) "is not substantially or reasonably related to the accomplishment of the health, safety and general welfare of the people," (2) "is not reasonably suited to protecting and promoting harmonious residential areas," and (3) "does not comply with constitu-

tional requirements of equal protection, neither in its enactment nor in its application to the facts of this case, and in particular, to Rosson."

The applicable principles are well settled. In Board of Supervisors v. Carper, 200 Va. 653, 660, 107 S.E. 2d 390, 395 (1959), we said:

> The legislative branch of a local government in the exercise of its police power has wide discretion in the enactment and amendment of zoning ordinances. Its action is presumed to be valid so long as it is not unreasonable and arbitrary. The burden of proof is on /the person/ who assails it to prove that it is clearly unreasonable, arbitrary or capricious, and that it bears no reasonable or substantial relation to the public health, safety, morals, or general welfare. The court will not substitute its judgment for that of a legislative body, and if the reasonableness of a zoning ordinance is fairly debatable it must be sustained.

And, in Fairfax County v. Snell Corp., 214 Va. 655, 659, 202 S.E.2d 889, 893 (1974), we stated:

> Inherent in the presumption of legislative validity stated in Carper is a presumption of reasonableness. But, as Carper makes plain, the presumption of reasonableness is not absolute.

Where presumptive reasonableness is challenged by probative evidence of unreasonableness, the challenge must be met by some evidence of reasonableness. If evidence of reasonableness is sufficient to make the question fairly debatable, the ordinance "must be sustained." If not, the evidence of unreasonableness defeats the presumption of reasonableness and the ordinance cannot be sustained.

A fairly debatable question is presented "when the evidence offered in support of the opposing views would lead objective and reasonable persons to reach different conclusions." Fairfax County v. Williams, 216 Va. 49, 58, 216 S.E.2d 33, 40 (1975). The evidence required to raise a question to the fairly debatable level must be "not only substantial but relevant and material as well." Id. And, while a trial court's finding of unreasonableness in zoning action carries a presumption of correctness, we still accord the action its presumption of legislative validity in our review. Loudoun Co.v. Lerner, 221 Va. 30, 34-35, 267 S.E.2d 100, 103

(1980).

A zoning ordinance must not arbitrarily discriminate, either in terms or application. "When a land use permitted to one landowner is restricted to another similarly situated, the restriction is discriminatory, and, if not substantially related to the public health, safety, or welfare, constitutes a denial of equal protection of the laws." Bd. Sup. James City County v. Rowe, 216 Va. 128, 140, 216 S.E.2d 199, 210 (1975). But, in reviewing zoning ordinances, the courts "deal with economic and social legislation where legislatures have historically drawn lines which (the courts) respect against the charge of violation of the Equal Protection Clause if the law be "reasonable not arbitrary'"... and bears 'a rational relationship to a (permissible) state objective.'" Village of Belle Terre v. Borass, 416 U.S. 1, 8 (1974).

Two Code sections are pertinent. Section 15.1-427, part of Title 15.1, Chapter 11, entitled "Planning, Subdivision of Land and Zoning," states that the "chapter is intended to encourage local governments to improve (the) public health, safety, convenience and welfare of (their) citizens and to plan for the future development of communities to the end... that residential areas be provided with healthy surrounding(s) for family life ...." Section 15.1-489, also part of Chapter 11, provides that "(z)oning ordinances shall be for the general purpose of promoting the health, safety or general welfare of the public and of further accomplishing the objectives of § 15.1-427" and that, "(t)o these ends, such ordinances shall be designed... (3) to facilitate the creation of a convenient, attractive and harmonious community..."

In our opinion, § 1-34(a) is sub-

stantially related to promotion of the public health, safety, and welfare, is reasonably suited to protection of harmonious residental areas, and does not in its terms arbitrarily discriminate. According these aspects ot the problem due deference, we believe that the enactment of the section reflects a proper exercise of the discretion vested in the legislative branch of local government, directed to the accomplishment of a legitimate state objective.

In the field of zoning, the line which '"separates the legitimate from the illegitimate assumption of power is not capable of precise delimitation. It varies with circumstances and conditions.'" Belle Terre, 416 U.S. at 4, quoting from Euclid v. Ambler Co., 272 U.S. 365, 387 (1926). Where the question is whether to permit home occupations in residential areas and, if so, to what extent, the legislative body necessarily engages in

a balancing of interests that may vary from area to area as circumstances and conditions differ.

On one side is the pressure to continue the time-honored practice of permitting such persons as doctors, lawyers, music teachers, and dressmakers to practice their professions and pursue their occupations in their respective residences. On the other is the desire to preserve the residential character of areas designated for residential use. Both sides involve important considerations substantially affecting public health, safety, and welfare.

In making its decision in this type of case, a legislative body properly may consider the necessity of keeping residential areas free of disturbing noises, increased traffic, the hazard of moving and parked vehicles, and interference with quiet and open spaces for child-play. Belle Terre, 416 U.S. at 5. Also pertinent are

the possible consequences of permitting "outside" employees in home occupations:

> (W)hen the requirement for residence is dropped, what was a home becomes a professional building (where perhaps more than one doctor, lawyer, etc., may engage in the pursuit of his profession); or an erstwhile home is transformed into a place where the business of dressmaking or millinery or music instruction is conducted. Thus, a clearly discordant element is injected into a high-class residential district and erosion of the overall zoning scheme begins.

Keller v. Westfield, 39 N.J. Super. 430, 436, 121 A.2d 419, 422 (1956).

In avoidance of these consequences, Manassas sought to limit the quantum and scope of business activity in residential districts. Striking a balance between the competing interests, the City chose to permit home occupations in residential districts, restricting the right, however, to "the immediate family residing in the dwelling." We think this action presents a classic example of legislative discretion at work in aid of the public health, safety, and welfare.

We have held, however, that "no matter how legitimate the legislative goal may be, the police power may not be used to regulate property interests unless the means employed are reasonably suited to the achievement of that goal." Alford v. Newport News, 220 Va. 584, 586, 260 S.E. 2d 241, 243 (1979). Here, Mrs. Rosson contends that, even conceding the desirability of promoting and protecting harmonious residential areas, a "no outsider" restriction in home occupations is unreasonable.

Mrs. Rosson argues that Manassas could have preserved the family character of residential districts and yet permitted "outside" employees in home occupations by limiting to two the number of such employees. We agree that this might have been a reasonable alternative, but it does not follow that it is the only reasonable plan or that the plan adopted by Manassas is unreasonable. Fairfax County v.

Jackson, 221 Va. 328, 335, 269 S.E. 2d 381, 386 (1980)

A similar argument was made in Belle Terre. There, an ordinance restricted land use, with certain exceptions, to one-family dwellings. The word "family" as used in the ordinance was defined to include "(o)ne or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit. (and a) number of persons but not exceeding two (2) living and cooking together as a single housekeeping unit though not related by blood, adoption, or marriage...." 416 U.S. at 2.

It was argued in Belle Terre that "if two unmarried people can consitute a 'family,' there is no reason why three or four may not." The court answered: "But every line drawn by a legislature leaves some out that might well have been included. That exercise of discretion, however, is a legislative, not a judicial

function." 416 U.S. at 8 (footnote omitted).

Mrs. Rosson argues further that we should hold the "no outsider" restriction not reasonably suited to promoting harmonious residential areas because "(t)he evidence produced through the City Council itself, including its Mayor, showed, by default, the unreasonableness of the (restriction). City did not come forward with any evidence to show (the restriction was) in fact reasonable. Therefore the evidence of unreasonableness defeated the presumption of reasonableness and the (restriction) should not be sustained."

We disagree with Mrs. Rosson. She does not tell us where in the record we can find evidence produced by the City which shows "by default," that the "no outsider" restriction is not reasonably suited to promotion of harmonious residential areas. We do find, however, a statement by the city manager, one of the City's witnesses, that is directly

on point:

> (T)here isnothing to my mind that could be any more damaging to a piece of residential property than to have a business spring up next door if it is not properly handled and in order to make sure that the business is not one that can get out-of-hand and be objectionable to the neighborhood, the best way in my opinion is to make sure that it is strictly operated by the people that live in the home.

We will assume for purposes of this discussion that Mrs. Rosson presented probative evidence of the unreasonableness of the "no outsider" restriction. Still, the statement of the city manager, and other evidence submitted by the City, was sufficient to make the question of the restriction's reasonableness at least fairly debatable. Hence, the presumption of reasonableness was not defeated.

This brings us to the equal protection question. As noted earlier, a zoning restriction is inviolate against an equal protection claim if it is reasonable and bears a rational relationship to a permissible state objective. Belle Terre

416 U.S. at 8. We have in the discussion just concluded upheld the reasonableness of the "no outsider" restriction. We now hold the restriction is rationally related to a permissible state objective.

Code§§ 15.1-427 and -489 establish the legislative goal of providing residential areas "with healthy surrounding(s) for family life" and facilitating "the creation of a convenient, attractive and harmonious community." The achievement of this goal is a permissible state objective. Belle Terre, 416 U.S. at 9. The "no outsider" restriction of the Manassas ordinance contributes directly and substantially to that objective. Hence, § 1-34(a) does not in its terms arbitrarily discriminate among those subject to its restriction.

Mrs. Rosson maintains, however, that, in application, §1-34(a) "discriminates against widows, the unmarried, and those ...not fortunate enough to have families."

[2] She says that, a widow with no immediate family, "she has been singled out for different, if not special, treatment."

The burden was upon Mrs. Rosson to prove she was the object of discrimination by showing she was treated differently from others similarly situated. She failed in this burden. She neither showed that another in her status, a single or widowed non-family property

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[2] A similar argument was made in Belle Terre: "It is said that the Belle Terre ordinance reeks with an animosity to unmarried couples who live together." The Court replied: "(T)here is no evidence to support (the argument); and the provision of the ordinance bringing within the definition of a 'family' two unmarried people belies the charge." 416 U.S. at 8.

The Manassas zoning ordinance contains a similar inclusive definition of 'family': "A number of persons not exceeding three, living and cooking together as a single housekeeping unit though not related by blood, adoption or marriage." Section 1-25 (b). Inexplicably, although § 1-25 is printed in the appendix, neither party has alluded to the section in argument.

owner, had been permitted to use "outside" employees in a home occupation nor that her situation was similar to the one property owner in the neighborhood actually using "outside" employees. Wright Realty, Inc., is that one property owner.

Wright Realty claims valid status for its real estate business as a non-conforming use; the City recognizes this status. The record shows that, prior to the adoption of the City's zoning ordinance, Dr. William Jamison lived in, and conducted his practice from, the dwelling located on the property; he was assisted by his wife, who was a nurse, and one part-time employee. Following adoption of the ordinance, Dr. Jamison died. For approximately eighteen months following his death, his widow kept the office open to administer medication and to collect the doctor's accounts. Wright Realty then purchased the prperty and has since conducted a real estate business in the former dwelling.

The firm employs eleven to thirteen persons.

Mrs. Rosson asks: "(H)ow can City justify the change over from a medical office maintained in a dwelling in which (Dr. Jamison) lived... to a real estate office with no restriction as to number, relationship or residency of employees and treat this change as an extension of the non-conforming use which consisted of a doctor with two employees?"

In this question, Mrs. Rosson implies that the City's recognition of Wright Realty's non-conforming use is wrongful, resulting in discrimination against her, and she suggests that the wrong can be corrected only by permitting her to use "outside" employees in her business. Even if we assume Wright Realty's use is wrongful, we must reject this suggestion; the law does not follow the thesis that two wrongs make a right.

For the reasons assigned, the order

denying the City's petition for injunction will be reversed, and the case will be remanded for the entry of an appropriate restraining order in accordance with the prayer of the petition.

Reversed and Remanded

APPENDIX B

Lower Court Findings And Opinions:

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

EDWARD T. FREED,
Zoning Administrator,
City of Manassas,

Complainant

vs. Chancery No. 12064

DORIS B. ROSSON and
DORIS B. ROSSON, T/A
Doctor's Answering
Service and/or
Greater Manassas
Answering Service,

Respondent

COMMONWEALTH OF VIRGINIA,
CITY OF MANASSAS

vs. CRIMINAL NO. 8198

DORIS B. ROSSON

MEMORANDUM
ON
DECISION

ACTION:

Chancery No. 12064

The Complainant, EDWARD T. FREED, Zoning Administrator, City of Manassas, seeks to enjoin the Respondent, DORIS B. ROSSON, from using her property at 9014 Sudley Road, City of Manassas, Virginia, for a (limited) home occupation, a telephone answering service in which two part-time employees are engaged and who are not related to the Respondent nor

reside within the premises.

Criminal No. 8198

City of Manassas is prosecuting the Respondent for alleged violations ofSection 3-1-1 and Section 1-34a, Zoning Ordinance of City of Manassas and reaches this court on appeal by the Respondent from the General District Court.

RESPONSE:

The Respondent claims that the pertinent sections of the City's Zoning Ordiance, hereinafter referred to as Zoning Ordinance, are, to-wit:

> "Section 1-34 (Limited) Home Occupation conducted in a residential dwelling unit and restricted to:
>
> a. No person(s) other than the immediate family residing in the dwelling shall be engaged in such occupation."

is d(e)scriminatory, arbitrary and unreasonable and not related to the promotion of the health, safety and general welfare of the public and therefore illegal.

Further, that the functional aspects of the Section 1-34a deprives the Respondent of a ligitimate use of her property in violation of Article 1, Section 11, Constitution of Virginia and Section 1, 14th Amendment, Constitution of United States, and therefore unconstitutional.

DETERMINATION OF PERTINENT FACTS

1. The Respondent, a widow, with no family, solely operated a telephone answering service in her residence at 9014 Sudley Road, City of Manassas, Virginia, for two years prior to January, 1978, by obtaining a "business license" from the City of Manassas; the Respondent did not seek nor did the City of Manassas require a special use permit for such solely operated telephone answering service.

2. Subsequent to January, 1978, the Respondent purchased another telephone answering service; combined with her solely operated telephone answering service and engaged the services of two part-time employees, not related to the Respondent nor residing within the Respondent's premises, and in June, 1978 began operation of the subject telephone answering service in her residence at 9014 Sudley Road, City of Manassas; such operation continues to date.

3. The subject residence is divided into four apartments; located in the R-1, Residential District, of the Zoning Ordinance; such residence is a non-conforming structure in the R-1 zoning by reason of the four apartments therein; situated on a four lane, primary street

or road, connecting State Routes 28 and 234, for connection with Interstate Route 66.

4. In June, 1978, the Respondent, acting on advice from the Zoning Administrator, made application to the Board of Zoning Appeals of the City of Manassas for a variance on the requirement that no person(s) other than immediate family, residing in the dwelling, shall engage in such occupation; BZA denied such application on the ground that it did not have the authority to amend the ordinance.

5. Subsequent to the commencement of the subject cases, the Respondent, at the suggestion of the court, made application for a special use permit pursuant to the Zoning Ordinance, to the City Council of Manassas, together with an application, at the direction of her counsel, for rezoning the subject property from R-1 to B-1 and/or amending Section 1-34a, supra, to a less restrictive provision, City Council of Manassas denied the application for rezoning and request for the amendment, but did grant the Respondent a special use permit, which is subject to Section 1-34a, supra.

ISSUE:

Legality of Section 1-34a, Zoning Ordinance, to-wit:

"No person(s) other than immediate family residing in the dwelling shall be engaged in such occupation."

OPINION:

1. The law, including zoning and its rules and regulations, is founded on the principal of serving the individual citizen as a member of society as well as society in general; the law is not a cold, aloof instrument as a falcon perched on a limb which springs into action when trespass is made within the domain; the law inherently seeks justice for the individual; society's existence and survival by necessity infringes upon the rights of the individual, which invokes a constant balancing of mutual benefits. Thusly, the common law recognized that a property owner had a basic and vested right to use his property for any legitimate purpose, not constituting a nuisance. Necessity gave rise to infringements on such rights under the police power of government to protect and promote the health, safety and general welfare of the public. Gorich v. Fox, et als, 145 Va. 554, 560; 134 SE 914, 916 (1926).

"The legislature may, in the exercise of the police power, restrict personal and property rights in the interest of public health, public safety and for promotion of the general welfare."

2. The City of Manassas, under the enabling statutes of Title 15.1, Chapter 11, Code of Virginia of 1950, as amended, has enacted a Zoning Ordinance and prescribed certain rules and regulations therein, including Section 1-34a, supra. Unquestionably, the City of Manassas has the police power in matters of zoning to protect and promote the health, safety, morals and general welfare of the public. Succinctly stated, does Section 1-34a, supra, and the functional aspects thereof, strike a balance between private property rights and public interests; in the subject case, has public power over private property rights been exercised judiciously and equitably? (Board of Supv. of Fairfax County v. Snell Const. Corp., 214 Va 665, 202 SE2d 889)

3. Public or police power is not without limitation and to override the honored and revered common law right of use, such restrictions must not unreasonably, arbitrarily or capriciously deprive a person of the legitimate use of his pro-

erty. (Bd. of Supv. of Fairfax County v. Carper, 200 Va 653, 107 SE2d, 397)

4. In the exercise of the police power there must be a substantial relationship to the protection and promotion of public health, safety, morals and general welfare. (Bd. of Supv. of James City v. Rowe, 216 Va. 128, 216 SE2d 199)

5. The means employed in the exercise of the police power must be reasonably suited to achieve the goal of protecting and promoting the public health, safety and general welfare. (Alford v. City of Newport News, Advance Sheets - November 21, 1979):

"But no matter how legitimate the legislative goal may be, the police power may not be used to regulate property interests unless the means employed are reasonably suited to the achievement of that goal."

6. It is clear that the Respondent is using her property for a legitimate purpose under the Zoning Ordinance and so recognized by the City of Manassas in granting of the special use permit for the telephone answering service, subject to the restriction of Section 1-34a, supra. Further, the functional aspects of Section 1-34a unquestionably discriminates against the "non-family" or "single" residential property owners for limited home occupations

in the City of Manassas. The City contends that such discrimination is a proper exercise of its police power in protecting and promoting harmonious residential areas. The Respondent contends in essence that such discrimination is contrary to the laws stated above.

7. The evidence presented and personal inspection of the respective areas of Sudley Road by the court, discloses the following examples of home occupations thereon, to-wit:

a. Dr. Allen Marshall, Chiropractor, 9105 Sudley Road, a short distance from the subject property, has been issued a special use permit by the City to use his home as a professional office with no employee outside of his immediate family and reside within the premises.

b. Dr. Victor N. Guerrero, Orthopedic Surgeon, 9036 Sudley Road, likewise a short distance from the subject property, uses his home for professional offices under a "vested right" originating under a special use permit granted by the City to his predecessor, Dr. Bennett, another orthopedic surgeon.

c. Dr. George M. Berberian, General Surgeon, 9035 Sudley Road, likewise a short distance from the subject property, uses his home for professional offices under a special

use permit from the City.

(There is no evidence on whether or not Drs. Bennett, Guerrerro and Berberian have employed or presently employ persons outside of the immediate family and non-residents of the premises; there is the inference that Dr. Berberian does not reside within the premises at 9035 Sudley Road.)

c. Wright Realty, Inc., 9009 Sudley Road, across the street from the subject premises operates a real estate office, from the former residence of Dr. William Jamison, Thoracic Surgeon, who had his professional offices therein for many years prior to his death, and classified as a non-conforming use when incorporated into the City of Manassas; such premises are not used for any residential purpose.

8. Thusly, the functional aspect of Section 1-34a results in Dr. X, a "non-family" or "single" doctor, cannot operate his professional offices in his home as he requires the services of a nurse, while Dr. Z, a married doctor, in the same residential area, can operate his professional offices in his home as his wife serves as his nurse.

The same discrimination exists as to

other occupations or professions amenable to use of residences for such occupations. The rationale for such discrimination between "non-family" or "single" residential property owners, requiring limited outside assistance and the "family" residential property owners, employing services of the immediate family and residing in the premises, for home occupations is difficult to discern in achieving the legislative goal of protecting and promoting harmonious residential areas. It is conceivable that a "family" homeowner, with a large immediate family, residing in the residence and all engaged in the home occupation, could be more disruptive to the harmony of the subject residential area than the respondent with her two part-time employees in the telephone answering service from the subject residential structure containing four apartments.

9. Under closer scrutiny, and consideration of totality of circumstances and situations in the instant case, logic and common sense dictates that the patients and traffic engendered thereby of Drs. Marshall, Guerrero and Berberian with their professional signs and parking areas on their respective residences is more disruptive to the harmony of the subject residential area than two-part

time employees engaged in a telephone answering service from a apartment structure, without any identification that such services are being conducted therein.

Further, additional discrimination against the Respondent should be noted although, not decisive in this opinion, arises from City's position of construing the operation of a real estate office at 9009 Sudley Road, former residence and office of Dr. Jamison, as continuation of a nonconforming use, without any residents therein, for operation of Wright Realty, Inc. If character of the nonconforming use in existence at the time of imposition of the zoning restriction determines continuation of respective future non-conforming uses, then the change from a residence and doctor's office therein to a real estate office, without any residents therein in the R-1 zoning, demonstrates the City's position of applying different standards to their goal protecting and promoting harmonious residential areas. (Knowlton v. Browning-Ferris Industries, Advance Sheet of Supreme Court of Virginia, Record No. 780109, November 21, 1979)

10. The enactment of zoning regulations is not a scientific act; discretion of the legislative body must be recognized;

the functional aspects or results are in some degree arbitrary and discriminatory (West Bros. Brick Co. vs. City of Alexandria, 169 Va. 271, 192 SE 881). However, there is a basic difference in the discretion not to enlarge a zoning district or deny a specific rezoning request as in this instance of the City refusing to rezone from R-1 to B-1, and the discretion that excludes all "non-family" or "single" residential property owners from (limited) home occupations in the R-1 zoning throughout the City, with "outside" assistance, no matter how limited or extent of such assistance or employment; the adage that blood is thicker than water has little or no application in home occupation and protecting and promoting harmonious residential areas.

11. It is not the function of the judiciary to legislate, but within the realm of discretion, it is apparent that the City of Manassas can promulgate a more equitable, less discriminatory criteria on employment in home occupations; such position not to be construed that the City must allow (limited) home occupations in R-1 zoning; to the contrary, if home occupations are allowed, then the prescribed regulations should judiciously and equitably balance the public interest

and private property rights without flagrant discrimination.

12. The City's argument on the Respondent's failure to obtain a writ of certiorari on the ruling of the Board of Zoning Appeals is without merit; a board of zoning appeals has no power to legislate or repeal or amend the provisions of a zoning ordinance (Belle Homes Citizens Assoc. v. Schumann, 201 Va. 36, 109 SE2d, 139).

ACCORDINGLY, it is my decision to declare that Section 1-34a, Zoning Ordinance, City of Manassas, supra, illegal by reasons, to-wit:

1. Such provision is discriminatory, arbitrary and unreasonable when applied to "non-family" or "single" residential property owners desiring (limited) home occupation with "outside" assistance.

2. Subject provision is not substantially or reasonably related to protecting the health, safety and general welfare of the public.

3. Such provision is not reasonably suited to achievement of the legislative goal of protecting and promoting harmonious residential areas.

4. Such provision deprives the Respondent of a legitimate use of her

property in violation of Article I, Section II, Constitution of Virginia and Section 1, 14th Amendment, Constitution of United States.

ACCORDINGLY, the petition to enjoin is denied and the criminal prosecution against the Respondent is dismissed.

/S/ Percy Thornton, Jr.
JUDGE

DATE: January 2, 1980

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

EDWARD T. FREED,
Zoning Administrator,
City of Manassas,

Complainant

vs. CHANCERY NO. 12064

DORIS B. ROSSON and
Doris B. ROSSON, T/A
Doctor'S Answering Service
and/or Greater Manassas
Answering Service,

Respondent

COMMONWEALTH OF VIRGINIA,
CITY OF MANASSAS

VS. CRIMINAL NO. 8198

DORIS B. ROSSON

JUDGEMENT ORDER

These matters having come on for trial by the Court, trial by jury having been waived by the parties, on October 4, 1979, and not being concluded on that date, were continued over to October 24, 1979; whereupon the trial proceeded with the taking of testimony and the presentation of evidence by and through sworn witnesses and exhibits presented by the parties to this litigation, and upon the evidence thus presented, upon the oral arguments of counsel for the litigants, upon written

memorandum submitted by counsel, upon the papers formally read herein; and upon the Court having made certain findings of fact and conclusions of law as set forth in its "Memorandum on Decision" filed herein and made a part hereof,

It appearing to the Court that the provisions of Section 1-34a of the Zoning Ordinance, City of Manassas, are discriminatory, arbitrary and unreasonable when applied to "non-family" or "single" residential property owners desiring to conduct a (limited) home occupation with "outside" assistance, and

It further appearing to the Court that the said provisions of said Zoning Ordinance are not substantially or reasonably related to the protection or promotion of the health, safety, and general welfare of the public, and

It further appearing to the Court that the said provisions are not reasonably suited to achievement of the legislative goal of protecting and promoting harmonious residential areas, and

It further appearing to the Court that enforcement of said provisions would deprive the Respondent of a legitimate use of her property and would therefore,

be in violation of Article I, Section II, Constitution of Virginia and Section 1, 14th Amendment, Constitution of the United States of America, it is therefore,

ADJUDGED, ORDERED and DECREED that Section 1-34a, Zoning Ordinance, City of Manassas, State of Virginia, is illegal, and the petition to enjoin Doris B. Rosson and Doris B. Rosson, T/A Doctor's Answering Service and/or Greater Manassas Answering Service, being Chancery No. 12064 is hereby denied and the action is hence dismissed; and the criminal prosecution under the style of Commonwealth of Virginia, City of Manassas vs. Doris B. Rosson, bearing Criminal No. 8198, be likewise dismissed,

And this Judgement Order is final.

ENTERED THIS 1st DAY OF FEBRUARY, 1980.

/S/ PERCY THORNTON, JR.
PERCY THORNTON, JR.
JUDGE

I ask for this:

/S/ William J. LoPorto
William J. LoPorto
Counsel for Doris B. Rosson

Seen and objected to:

/S/ Robert W. Bendall
Robert W. Bendall
Counsel for Zoning Administrator
And City Of Manassas

APPENDIX C

Judgment Appealed From

See Appendix A

A-1 - A-20

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 9th day of September, 1982.

City of Manassas, and F. R. Hodgson, Zoning Administrator, City of Manassas, Appellants,

against Record No. 800642
Circuit Court Nos. 8198 and 12064

Doris B. Rosson and Doris B. Rosson, t/a Doctor's Answering Service and/or Greater Manassas Answering Service, Appellees,

Upon an appeal from a judgment rendered by the Circuit Court of Prince William County on the 1st day of February, 1980.

For reasons stated in writing and filed with the record, the court is of opinion that the judgment appealed from is erroneous. Accordingly, the judgment is reversed and annulled, and the case is remanded to the said circuit court for the entry of an appropriate restraining order in accordance with the prayer of the petition.

The appellants shall recover of the Appellees the costs expended in the prosecution of this appeal.

This order shall be certified to

the said circuit Court.

A Copy,

Teste:

/S/ Allen L. Lucy

Clerk

Apellants' costs:

Filing fee	$25.00
Printing brief - Code §14.1-182 - not to exceed $200	?
Printing appendix	?
Attorney's fee	50.00

Teste:

/S/Allen L. Lucy
Clerk

Appendix D

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA

CITY OF MANASSAS, ET AL

Appellees

v. Record No. 800642

DORIS B. ROSSON, ET AL

Appellant

NOTICE OF APPEAL

Notice is hereby given that the Appellants, Doris B. Rosson, t/a Doctor's Answering Service and/or Greater Manassas Answering Service, do hereby appeal the judgment of the Supreme Court of Virginia entered herein on September 9, 1982, to the Supreme Court of The United States.

The part of said judgment being appealed from is that portion which holds Section 1-34(a) of the Zoning Ordinances of the City of Manassas, as applied to the said Doris B. Rosson, et al, and persons similarly situated, not to be in violation of Section 1, of Amendment XIV, of the Constitution of The United States and in reversing the decision of the Circuit Court of Prince William County entered on February 1, 1980, holding among other things, that the provisions

of the said Section 1-34 (a) of the Zoning Ordinances of the City of Manassas are discriminatory, arbitrary and unreasonable when applied to "non-family" or "single" residential property owners desiring to conduct a (limited) home occupation with "outside" assistance.

The Appeal is taken under and by virtue of the provisions of 28 USC Section 1257, and Section 1, of Amendment XIV, of the Constitution of the United States.

/S/DORIS B. ROSSON
DORIS B. ROSSON

By /S/ William J. LoPorto
William J. LoPorto, Counsel

CERTIFICATE OF SERVICE

This is to certify that on October 9, 1982, copies of the foregoing Notice of Appeal were mailed to each of the following persons or entities, by depositing said copies in the United States Post Office, at Callao, Virginia, with first class postage prepaid: Allen L. Lucy, Clerk, Supreme Court of Virginia, Supreme Court Building, Richmond, Virginia 23219; C.E. Gnadt, Clerk, Circuit Court of Prince William County, Court House, Manassas,

Virginia 22110; Turner T. Smith, City Attorney, 9253 Lee Avenue, P.O. Box 51, Manassas, Virginia 22110; and Robert W. Bendall, Assistant City Attorney, 9253 Lee Avenue, P.O. Box 51, Manassas, Virginia 22110.

/S/ William J. LoPorto
William J. LoPorto

Appendix E

Zoning Ordinances Of The City of Manassas

1-34. (Limited) Home Occupation: An occupation conducted in a residential dwelling unit and restricted to:

a. No person(s) other than the immediate(d) family residing in the dwelling shall be engaged in such occupation.

b. The dwelling unit for the limited home occupation shall be clearly incidental to the use of the dwelling for residential purposes and in no case shall more than twenty-five per cent of the area be used in conducting the limited home occupation.

c. No equipment or p(o)rcess shall be used in the limited home occupation which creates noise, vibration, glare, fumes, odors or electrical or radio interference, detectable to the normal senses off the premises.

d. There shall be no change in the outward appearance of the building or premises or other visible evidence of the conduct of the occupation

other than one sign, as defined in a separate section of this ordinance, such sign to be mounted flat against the wall of the principal dwelling units.

e. There shall be no group instruction, group assembly or group activity on the premises.

f. Such use shall be subject to securing a special use permit.

3-1-1 In Residential Distric R-1 any building to be erected or land to be used shall be restricted to the following uses:

A. Single-Family dwellings.

B. Public and semipublic uses such as schools, hospitals, churches, playgrounds, and parks.

C. Limited home occupations as defined.

D. Accessory buildings permitted as defined, however, garages or other accessory structures, such as carports, porches and stoops, attached to the mainbuilding shall be considered part of the main building. No accessory building shall be closer than one (1) foot to any property line.

E. Public utilities: Poles, lines, distribution transformers, pipes, meters, and other facilities necessary for the provision and maintenance of public utilities, including water and sewage facilities.

F. Group Homes as defined in Section 1-32-1 of this ordinance.

G. Homes for Adults as defined in Section 1-32-1 of this ordinance.

9-1-1. If at the time of enactment of this ordinance any legal activity which is being pursued, or any lot or structure legally utilized in a manner or for a purpose which does not conform to the provisions of this ordinance, such manner of use or purpose may be continued as herein provided.

9-1-3. If any nonconforming use (structure or activity) is discontinued for a period exceeding one (1) year after the enactment of this ordinance, it shall then conform to the requirements of this ordinance.

9-1-4. Whenever a nonconforming structure, lot or activity has been changed

to a more limited nonconforming use, such use may only be changed to an even more limited use.

CONSTITUTION OF VIRGINIA

ARTICLE I, §11

Due process of law; obligation of contracts; taking of private property; prohibited discrimination; jury trial in civil cases.-That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, nor any law whereby private property shall be taken or damaged for public uses, without just compensation, the term "public uses" to be defined by the General Assembly; and that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination.

That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of

jurors for civil cases in courts of record to not less than five.

CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person whithin its jurisdiction the equal protection of the laws.